

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0101
Responsible Officer:	Renee Ezzy
Land to be developed (Address):	Lot CP SP 10040, 46 Victoria Parade MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA367/2010 granted for demolition of existing and construction of a seven 7 storey Residential Flat Building containing eleven 11 units with two 2 levels of basement car park decks and landscaping
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 10040
Applicant:	Mod Urban Pty Ltd

Application Lodged:	10/03/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	26/03/2020 to 09/04/2020
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This report provides an assessment for a modification application for an approved five (5) storey residential flat building with basement parking.

The original consent was issued by the NSW Land and Environment Court on 23 December 2011 for a residential building containing 13 apartments with basement parking for 18 cars. The consent contained specific conditions relating to the maintenance of amenity through the rear setback of the building.

On 29 July 2010, the Northern Beaches Local Planning Panel (NBLPP) approved a modification application (MOD2019/0029), which modified the building layout, roof design and reduced the number

of apartment from 13 to 11. This modification also included changes to the facade and balcony arrangements.

The assessment of the current modification application is to extend the front north facing balcony at Level 3 to incorporate additional area, which is currently a ledge to the west. In addition, the application seeks to reconfigure the planter box at Level 3 where it meets the front balcony to reflect the structure as it has been constructed with a space to enable access along the western terrace. A further change on the plans was identified in relation to the window adjoining the kitchen on the western elevation.

The site is zoned R3 Medium Density Residential under Manly Local Environmental Plan 2013 (MLEP 2013). Development for the purposes of a Residential Flat Building" is permissible with consent in the zone.

The application was advertised and notified in accordance with the Manly Development Control Plan 2013 (MDCP 2013) and five (5) submissions were received. The application is referred to the NBLPP for determination due to the Panel's previous involvement in the approval of the original and modified development.

PROPOSED DEVELOPMENT IN DETAIL

The modification seeks to demolish part of the existing planter and extension to the glass balustrade at the north-western corner of Level 3 of the building.

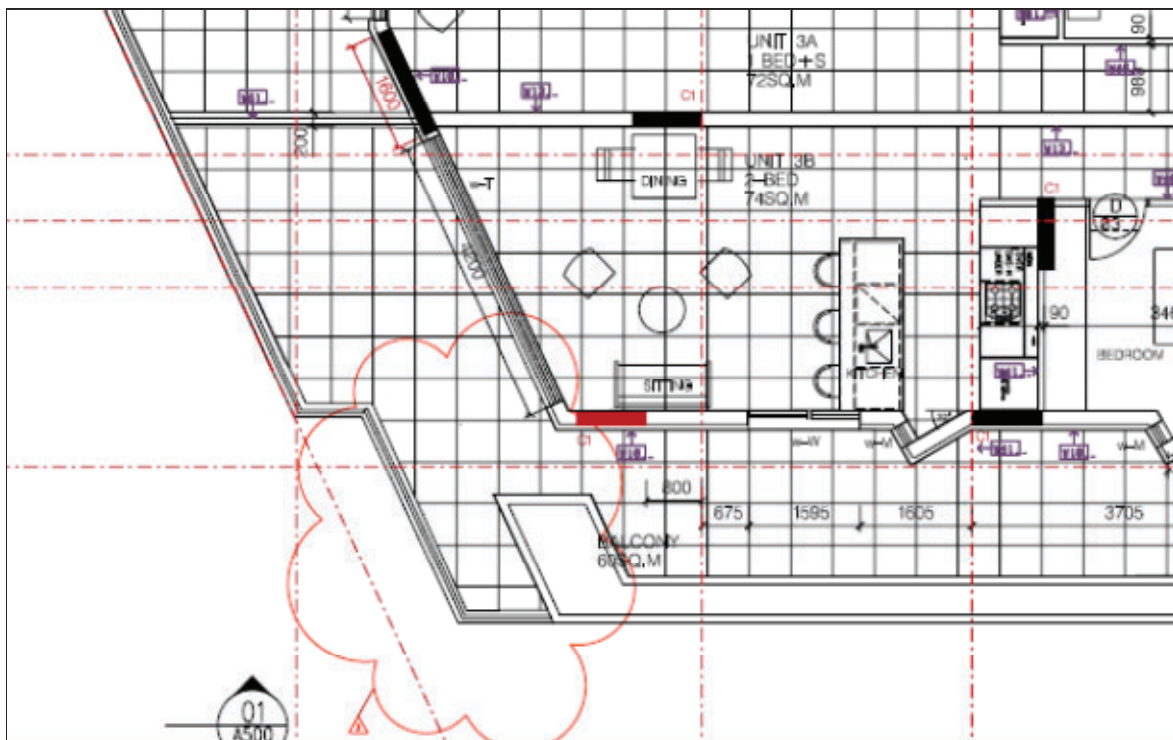


Figure 1 - The proposed balcony extension and reconfigured planter box at Level 3.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

SITE DESCRIPTION

Property Description:	Lot CP SP 10040 , 46 Victoria Parade MANLY NSW 2095
Detailed Site Description:	<p>The site is located on the south-eastern side of Victoria Parade, Manly and has a north-western to south-eastern orientation. It is legally described as Strata Plan 10040, No. 46 Victoria Parade, Manly.</p> <p>The site is level and is a rectangular shape. It is 14.56 m wide (at the Victoria Parade frontage) with side boundaries being 42.06 metres. The rear of the site is 14.585 metres wide. It adjoins a heritage-listed electricity substation (No 16124).</p> <p>The substation shares a boundary of 9.265 metres with the subject site. The remainder of the rear boundary and the adjacent north-eastern side boundary adjoin Dungowan Lane. Total site area is approximately 612.8m².</p> <p>The approved development is currently under construction with the building works nearing completion.</p> <p><u>Surrounding Development</u></p> <p>To the north-east: No. 14 South Steyne (heritage listed) and a multi-storey hotel building.</p> <p>To the south-east: A one-storey sub-station and adjacent to that, a multi-storey hotel building.</p> <p>To the south-west: No. 42-44 Victoria Parade (Pacific Harbour), a five-storey residential flat building of twenty (20) units.</p>

Opposite the site are several heritage listed buildings which back onto the Royal Far West complex.
The street trees of Victoria Parade have environmental heritage status.

Map:



SITE HISTORY

21 April 2011

Development Application No. DA367/2010 for a seven (7) storey residential flat building containing eleven (11) units and two (2) levels of basement parking for eighteen (18) vehicles was refused by the Manly Independent Assessment Panel (MIAP) on 21 April 2011.

22 July 2011

Section 82A Review of Determination against refusal of DA367/2010 was lodged. The application had been amended to a six (6) storey residential flat building with ten (10) apartments and one level of basement car parking for ten (10) vehicles.

12 October 2011

Land and Environment Court appeal lodged for the 'Deemed Refusal' of the S82A review.

23 December 2011

DA367/2010 was approved through a Section 34 agreement and consent orders issued by the NSW Land and Environment Court.

17 September 2012

DA367/2010/2 - Section 34 agreement for S96 modification to consent for a 5 storey residential flat building with basement carparking for 18 cars.

21 August 2014

DA367/2010/3 - This modification of the court consent (S96AA) was approved by MIAP.

4 December 2018

MOD2018/0294 - This S4.56 modification application of DA367/2010 (court consent) was refused by the NBLPP for the following reasons:

- The information provided with the modification application was insufficient to enable a proper assessment of the shadow impacts on the adjoining property to the west, number 42 – 44 Victoria Parade Manly.
- The information provided with the modification application was insufficient to enable a proper assessment of the proposed ceiling heights and roof form of the building.

MOD2019/0029

This S4.56 modification application for internal and external alterations was approved by the NBLPP on 29 July 2019.

MOD2019/0499

This s4.56 modification application was lodged with Council on 16 October 2019 to delete condition Nos. 94, 96, 97, 98, 99, 100, 103, and 119. The application was approved by NBLPP at its meeting dated 18 March 2020.

MOD2020/0037 (SEPARATE APPLICATION)

This s4.56 modification application was lodged with Council on 31 January 2020 to modify development consent DA367/2010 by constructing a fire rated roof over the driveway, fire rated boundary wall adjoining the substation and relocation of the carpark vehicle entry door. This application is the subject of a separate assessment report.

MOD2020/0101 (CURRENT APPLICATION)

This modification application is to modify development consent DA367/2010 by demolishing part of the planter box on Level 3 and replace it with a glazed balustrade. This application is the subject of this assessment report.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA367/2010, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Part Yes The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>In relation to the modification of the planter box within the Level 3 terrace area, this change to the configuration is considered a logical and acceptable change to the development which will allow direct access from the main balcony but does not change the proximity of this space to adjoining properties or enable increased activity due to its narrow width.</p> <p>Part No With regard for the extension of the main balcony terrace to encompass the ledge overhang to the west, this element of the modification is not supported, as it provides minimal improvement to the amenity of the subject apartment but will cause more substantial impact on the adjacent development at No. 42.</p> <p>Incorporating this area will enable access to be approximately 3.0m closer to these neighbours who at each level have their primary living and private open space balconies in a direct line of sight. The extension of the balcony over this ledge is not supported due to the increased impact of privacy and overlooking.</p>
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA367/2010 for the following reasons:</p> <p>The proposed realignment of the planter box does not change the substantive nature of the development being a five (5) storey residential flat building with basement parking.</p>
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2011 and the Northern Beaches Community Participation Plan.

Section 4.55(1A) - Other Modifications	Comments
consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the residential character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	The proposed reconfiguration of the planter box is considered a logical and reasonable modification to the approved development and

Section 4.15 'Matters for Consideration'	Comments
	<p>is supported.</p> <p>However, the assessment has found the proposed balcony extension to the west to be contrary to the relevant requirement(s) of Part 3.4.2 of Manly DCP and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. This aspect of the development is not considered to be in the public interest and has been deleted from the approval by condition.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Peter Charles Achterstraat	16 / 51 Ashburner Street MANLY NSW 2095
Vicki Maree Achterstraat	12 / 42 Victoria Parade MANLY NSW 2095
Ms Sandee Gai Walker	67 Irrubel Road NEWPORT NSW 2106
Ms Ann Beth Hatton Mr Geoff Kaye	16 / 42 Victoria Parade MANLY NSW 2095
Mr Graham John Butson	5 / 42 Victoria Parade MANLY NSW 2095

The following issues were raised in the submissions:

- Amenity/privacy impacts from balcony extension
- Beach View
- Demolition of planter box
- Window changed to a door on the western elevation

The matters raised within the submissions are addressed as follows:

- **Amenity Impacts on privacy**
 1. *Extending the balcony (approx. 2 meters - 25%), towards us will only have them closer and further impacting our privacy in our living area and balcony. The current location of the balustrade is an adequate distance away.*
 2. *Placing a pot plant on the extension is no solution in that it can be removed at any time. It would not add to privacy and would detract from the designer landscaping.*

3. *The current cut out section (approved by Council 15/7/2019), provides some distance and hence privacy for the neighbours. It also provides a lighter impact from within our living room and a view over it to Manly beach from our kitchen area. This section should not be used to extend the balcony.*
4. *The current balcony is in alignment with the balconies below and forms part of the overall design from the street and side view. Each floor below level 3 has a planter box in the north/western corner. The result being level 3 would be much closer than the other levels.*

Comment:

The area which is the subject of this modification is a ledge section which forms part of the roof for the apartment below and represents an architectural relief to the facade and stepping of the building form as the building increases in height.



Photo 1 - View of ledge from site



Photo 2 - View of ledge from neighbours terrace and lounge room

As can be seen from the photo from the subject site and the neighbouring property, this ledge will provide negligible usable space for the occupant of the unit due to its shape and size, however it will enable people to stand in that location and be 3m closer to occupants of the adjoining building and their primary living area. The planter box behind this ledge has not been constructed in accordance with the approved plans which had this element extending across the terrace in line with the ledge effectively restricting access to the western side balcony area. While the reduced planter can be supported to enable direct access to this secondary outdoor area, the inclusion of the ledge as part of the terrace is not supported.

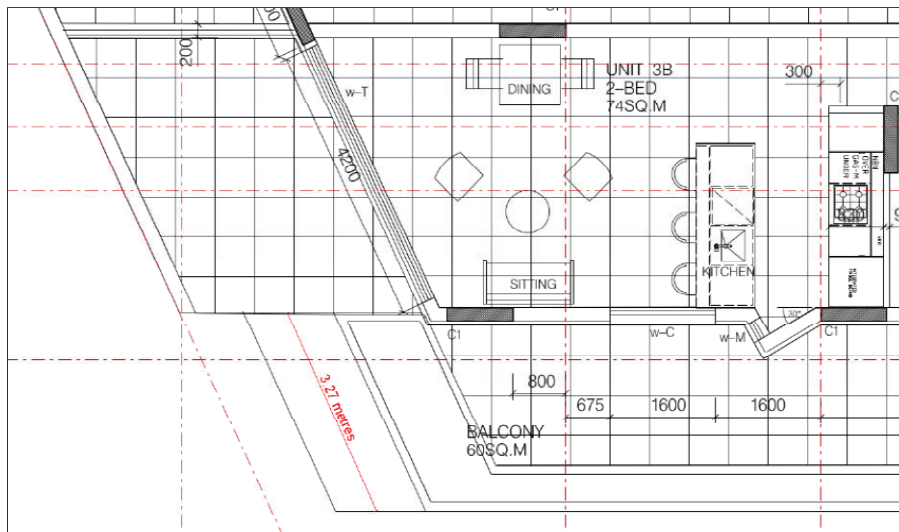


Figure 2 - Planter box as approved (MOD2019/0029)

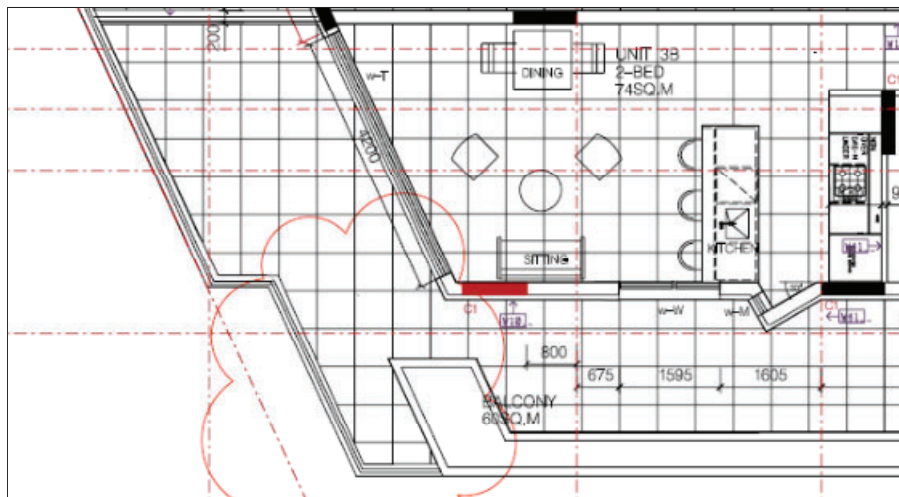


Figure 3 - Planter box as proposed (MOD2020/0101)

The owner of the subject apartment has stated that keeping the ledge clean and free of dirt and bird droppings was the main reason to extend the deck to include this area. The building contains numerous similar details forming the facade of the building and cleaning this area is not considered to be a sufficient justification for the change considering the additional impact on the adjoining properties.

Further, the facade of the building at each level incorporates either a planter box or physical recession to ensure the overall bulk and scale of the development is reduced as the building increases in height.

- Impact on Beach View**

Comment:

While the apartment (No.16) on Level 3 of 42 Victoria Parade does have views across the front of the site to Manly Beach, the view line remains mostly unaffected by this ledge. There is a small section of Norfolk Island Pines and water which would be interrupted from the kitchen window were this area to be infilled. However, this impact is considered negligible in context of the full view available from the dining room and terrace and therefore view loss is not considered a determinative factor in this application.

- **Window changed to a door on Level 3 of the western elevation.**

Comment:

While the application and the supporting documentation with this modification make no reference to this change to the window opening adjoining the kitchen of this apartment, there is a definite change identifiable on these plans. The small balcony area along this side of the apartment was designed as a secondary space for maintenance of the planter boxes that extend along the length of the unit. They are narrow to discourage use for recreation and entertaining and unnecessary traffic due to the fact they directly face numerous windows to bedrooms and living areas within the apartments of No. 42 Victoria Parade. As the planter box has not been constructed to separate this space from the main balcony, there is no supporting reason why a door should be or needs to be installed in this location. No objection is raised to the change to the planter box, however the change to the opening in this location is not supported.



Figure 4 - Window to Level 3 apartment as approved (MOD2019/0029)



Figure 5 - Window changed to a larger opening (MOD2020/0101)

REFERRALS

No referrals were sent in relation to this application

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

10 Development on certain land within coastal wetlands and littoral rainforests area

(1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:

(a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,

(b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,

(c) the carrying out of any of the following:

(i) earthworks (including the depositing of material on land),

(ii) constructing a levee,

(iii) draining the land,

(iv) environmental protection works,

(d) any other development.

Comment:

The site is not identified on the coastal wetlands or littoral rainforest map.

11 Development on land in proximity to coastal wetlands or littoral rainforest

(1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:

(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or

(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:

The site is not located in proximity to coast wetlands or littoral rainforest.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

(a) if the proposed development comprises the erection of a building or works—the building or works a

(b) the proposed development:

(i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and

(ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and

(iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and

(c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

The site is not identified within the coastal vulnerability area.

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(f) Aboriginal cultural heritage, practices and places,

(g) the use of the surf zone.

Comment:

The site is not located within the coastal environment area.

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The site is not located within the coastal environment area.

14 Development on land within the coastal use area

(a) has considered whether the proposed development is likely to cause an adverse impact on the following:

- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
- (iv) Aboriginal cultural heritage, practices and places,*
- (v) cultural and built environment heritage, and*

(b) is satisfied that:

(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or

(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The site is located within the coastal use area. The proposed modifications will not impact on the developments impact on the surrounding coastal and built environment.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposed modifications are not considered to cause any adverse impact on coastal hazards.

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Approved	Approved (Mod2019/0029)	Proposed	Complies
Height of Buildings:	11m	17.25m	Roof - 17.048m Lift overrun - 18.814m	No change to approved height	Yes
Floor Space Ratio	FSR:0.75:1 (1072.4m ²)	FSR: 1.78:1 (1090.7m ²) (DA0367/2010/3)	FSR: 1.78:1	No change to approved FSR	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.1 Acid sulfate soils	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 607m ²	Requirement	Approved	Approved (Mod2019/0029)	Proposed Compliance
4.1.2.1 Wall Height	East: 9m	15.95m (RL21.2)	15.73m (RL20.98)	No change to approved
	West: 9m	15.95m	15.73 (RL20.98)m	No change to approved
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	7.25m, consistent with prevailing setback	Victoria Parade 7.22m, consistent with prevailing setback	No change to approved
4.1.4.2 Side Setbacks and Secondary Street	Secondary street frontage - East: 5.26m (based on wall height)	Nil	Nil	No change to approved

Frontages	West: 5.26m	Nil to basement 3.45m to face of building	Nil to basement 3.45m to face of building	No change to approved
4.1.4.4 Rear Setbacks	8m (substation)	Nil to basement 4.765m to building 5.5m to balcony	Nil to basement 3.2m to balcony L1 & L2 5.195m to building (east) L1 & L2 3.5m to balcony L3 & L4	No change to approved
Schedule 3 Parking and Access	Total - 17 Spaces 14 x Residential 3 x Visitor	Total - 17 Spaces 14 x Residential 3 x Visitor	Total - 22 Spaces 17 x Residential (car stacker) 2 x Accessible (Basement) 3 x Visitor (Ground Level)	No change to approved

* The proposed extension to the balcony does not change the developments numerical compliance.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	No	No
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.6 Accessibility	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of non-compliance

The proposed extension of the balcony to incorporate the ledge to the west is considered to result in unnecessary and unacceptable privacy loss.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The proposed extension of the balcony will result in this space being up to 3.0m closer to the adjoining neighbours principal private open space and will exacerbate existing privacy and overlooking between the properties.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

The proposed works decrease existing privacy and separation between the properties and is not considered to provide any meaningful additional amenity to the subject site.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

Increased overlooking and compromised privacy does not contribute to neighbourhood security.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MDCP in relation to the extension of the balcony and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

3.4.3 Maintenance of Views

Merit Consideration:

The adjoining property owners have raised concerns with view loss resulting from the proposed infill of the ledge at Level 3 to extend the balcony. The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and

future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

The view affected is a small section of part of the Norfolk Island Pines on Manly Beach and a small amount of water between the foliage.

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Comment:

Views to Manly Beach are unobstructed by the adjoining development from the front north facing balcony and internal lounge and dining room area within Unit 16, No. 42 Victoria Parade. The view in question is obtained from the kitchen window which is on the side of the building and has a small obstructed view from an oblique angle.



Photo 3 - Oblique view obtained from the kitchen window within Unit 16, 42 Victoria Parade.

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

Given that the views from the front of the apartment on the balcony and from the lounge and dining room are unobstructed by the proposal toward Manly Beach, the small impact from the side kitchen window is considered negligible.



Photo 4 - Full view from the balcony and lounge room across the front of the subject site.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

The proposed extension of the balcony to include the ledge is considered reasonable in terms of view sharing. The proposal however is considered unreasonable and unacceptable due to other reasons including privacy and overlooking and for those reasons is not supported.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- All relevant and draft Environmental Planning Instruments (SEPP 55, SEPP 65, SEPP Coastal Management and SEPP Infrastructure)
- Manly Local Environmental Plan 2011
- Manly Development Control Plan 2011
- Codes and Policies of Council

This Clause 4.56 Modification Application has been assessed having regard to Section 4.15 of the Environmental Planning and Assessment Act, 1979, MLEP 2013 and the relevant codes and policies of Council. This assessment has taken into consideration application form, the submitted plans, Statement of Environmental Effects and other documentation submitted with the application and public submissions.

The proposed reconfiguration of the planter box on the north-western corner of Level 3 has been

assessed as satisfactory and is supported. The other modifications including an extension of the north facing balcony and a larger window opening have been assessed as unsatisfactory in terms of privacy and overlooking and have been recommended for deletion from the proposal by condition. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2020/0101 for Modification of Development Consent DA367/2010 granted for demolition of existing and construction of a seven 7 storey Residential Flat Building containing eleven 11 units with two 2 levels of basement car park decks and landscaping on land at Lot CP SP 10040,46 Victoria Parade, MANLY, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
2424-A107 - Rev 11 -- Level 3 Plan	20/01/2020	ARC Architects

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Add Condition 122. No Extension of Level 3 Balcony to the West to read as follows:

No consent is given or implied for any extension of the north facing balcony at Level 3 adjoining Unit 3B (known as Unit 8) to include the existing rendered ledge. This north facing balcony should be retained as approved by MOD2019/0029.

Reason: To ensure adequate privacy, overlooking and separation is maintained with adjoining building to the west.

C. Add Condition 123. No Consent to Window Change at Level 3 on Western Elevation to read as follows:

No consent is given or implied for any change or increase to the window opening adjoining the kitchen on the western elevation of Level 3 Unit 3B (known as Unit 8).

Reason: To ensure adequate privacy, overlooking is maintained with adjoining building to the west.